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Arizona Corporation Commission

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Attorneys for Johnson Utilities Company

## BEFORE THE ARIZONA CORPORATION COMMISSION

8 IN THE MATTER OF THE APPLICATION  
9 OF H2O, INC., FOR AN EXTENSION OF  
10 ITS EXISTING CERTIFICATE OF  
11 CONVENIENCE AND NECESSITY.

DOCKET NO. W-02234A-00-0371

12 IN THE MATTER OF THE APPLICATION  
13 OF JOHNSON UTILITIES, L.L.C., DBA  
14 JOHNSON UTILITIES COMPANY FOR AN  
15 EXTENSION OF ITS CERTIFICATE OF  
16 CONVENIENCE AND NECESSITY TO  
17 PROVIDE WATER AND WASTEWATER  
18 SERVICE TO THE PUBLIC IN THE  
19 DESCRIBED AREA IN PINAL COUNTY,  
20 ARIZONA.

DOCKET NO. W-02987A-99-0583

21 IN THE MATTER OF THE APPLICATION  
22 OF JOHNSON UTILITIES, L.L.C., DBA  
23 JOHNSON UTILITIES COMPANY FOR AN  
24 EXTENSION FOR ITS CERTIFICATE OF  
25 CONVENIENCE AND NECESSITY TO  
26 PROVIDE WATER AND WASTEWATER  
SERVICE TO THE PUBLIC IN THE  
DESCRIBED AREA IN PINAL COUNTY,  
ARIZONA.

DOCKET NO. WS-02987A-00-0618

IN THE MATTER OF THE APPLICATION  
OF DIVERSIFIED WATER UTILITIES,  
INC. TO EXTEND ITS CERTIFICATE OF  
CONVENIENCE AND NECESSITY.

DOCKET NO. W-02859A-00-0774

IN THE MATTER OF THE APPLICATION  
OF QUEEN CREEK WATER COMPANY  
TO EXTEND ITS CERTIFICATE OF  
CONVENIENCE AND NECESSITY.

DOCKET NO. W-01395A-00-0784

**JOHNSON UTILITIES' RESPONSE TO  
RENEWED APPLICATION OF  
DIVERSIFIED WATER UTILITIES TO  
AMEND DECISION NO. 63960, AS  
AMENDED AND REQUEST FOR  
EXPEDITED ACTION**

As requested by the Assistant Chief Administrative Law Judge, Johnson Utilities

1 Company ("JUC") hereby responds to Diversified's renewed Application of Diversified Water  
2 Utilities to Amend Decision No. 63960, As Amended And Request For Expedited Action  
3 ("Renewed Application").<sup>1</sup> JUC opposes Diversified's application for the reasons briefly set  
4 forth herein. In short, Diversified's asks that the Commission rely on a four-year old evidentiary  
5 record to now make a decision that it declined to make four years ago. To make matters worse,  
6 Diversified now seeks "expedited action" on that decision and, as represented at the recent  
7 procedural conference, Diversified seeks relief without a hearing. Diversified's request offends  
8 fundamental notions of due process.

9 That A.R.S. § 40-252 is intended to comport with such notions of due process is clear on  
10 its face. Specifically, A.R.S. § 40-252 provides the Commission the power to alter or amend its  
11 prior decisions "upon notice to the corporation affected, and after an opportunity to be heard as  
12 upon a complaint." There were several parties (i.e., affected corporations) to the docket resulting  
13 in Decision No. 63960 and JUC submits that each party is entitled to the opportunity to be heard  
14 as upon a complaint. JUC further asserts that such right is not fulfilled, as counsel for Diversified  
15 suggested during the recent procedural conference, by merely allowing the party to appear before  
16 the Commission at an Open Meeting. Evidence is not taken by the Commission at its Open  
17 Meetings; rather, evidence is taken during evidentiary hearings overseen by an administrative law  
18 judge.

19 Given the now four (or more) year-old evidentiary record before the Commission in  
20 Decision 63960, the only way the Commission can ensure the public interest is served is to hold  
21 an evidentiary hearing, take evidence from the parties, including evidence reflecting current  
22 circumstances, and then render its decision upon such evidentiary record. In fact, Diversified's  
23 request for an amendment of Decision 63960 rests on Diversified's attempt to submit evidence of  
24 events occurring after the issuance of Decision 63960. See, e.g., Diversified Application at ¶¶ 10-

25 <sup>1</sup> Just prior to filing this response, JUC received another pleading from Diversified seeking to consolidate  
26 the application to amend with the pending CC&N extension requests. However, JUC's position, as  
expressed herein, that the application to amend should be denied as unnecessary is not changed.

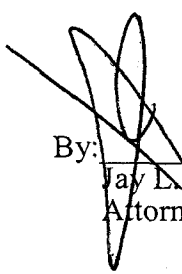
1 12. It would be patently unfair to allow Diversified to base its request on new evidence, while at  
2 the same time precluding others the opportunity to challenge the relief sought through the  
3 development of an evidentiary record. Thus, at a minimum, an evidentiary hearing is required  
4 under the circumstances presented by Diversified's renewed application.

5 In this case, however, holding an evidentiary hearing on Diversified's application for  
6 amendment of Decision No. 63960 would result in substantial duplication of efforts already  
7 underway in Docket Nos. W-029859A-04-0844 and WS-02987A-0869 (Consolidated). Put  
8 simply, an evidentiary hearing on Diversified's application to amend Decision 63960 would focus  
9 on whether there is a need and whether Diversified is a fit and proper entity to provide such  
10 service. The same question will be asked in the consolidated docket, at which time JUC's  
11 competing application and its fitness as a provider will also be addressed. Thus, the opportunity  
12 for the Commission to consider whether Diversified or JUC should be granted an extension of its  
13 CC&N to serve the subject area already exists. In that forum, the parties will be given an  
14 adequate opportunity to present their case and all due process requirements would be fulfilled.  
15 Holding an additional evidentiary hearing regarding Diversified's application for leave to amend  
16 would unnecessarily duplicate efforts and waste the resources of the Commission and parties.

17 Accordingly, JUC reurges its request that Diversified's application for leave to amend  
18 Decision 63960 be denied, and the parties be allowed to continue to prosecute their competing  
19 applications for CC&N extensions.

20 DATED this 17<sup>th</sup> day of March, 2005.

21 FENNEMORE CRAIG, P.C.

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23  
24 By: \_\_\_\_\_  
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1 Original and 21 copies of the foregoing  
2 Delivered this 11<sup>th</sup> day of March, 2005:

3 Docket Control  
4 Arizona Corporation Commission  
5 1200 W. Washington St.  
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7 COPY hand-delivered this 11<sup>th</sup> day of March, 2005:

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